

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARTHUR BELL and
RONNIE FREDERICKSON, III,

Plaintiffs,

CASE NO. 1:07-CV-944

v.

HON. ROBERT J. JONKER

ERIC B. RESTUCCIA, C. STALY,
and JOHN DOE ("OFFICER AHO
CLOCK NO. 174"),

Defendants.

ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 102), and Plaintiff Bell's Objections to it (docket # 105). Under the Federal Rules of Civil Procedure, when a party objects to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct. The Report and Recommendation recommends granting the last remaining defendant's motion for summary judgment dismissing this matter for lack of exhaustion (docket # 96). Plaintiff's objections in no way address this point. From the record, it plainly appears that plaintiff failed to exhaust his administrative remedies, and that the matter must therefore be dismissed on summary judgment.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 102) is approved and adopted as the opinion of the Court. ¹

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (docket # 96) is **GRANTED**, and that this matter be dismissed for lack of exhaustion. Judgment shall enter in favor of defendant and against plaintiffs.

Dated: September 11, 2009

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

¹The Court has also reviewed Plaintiff Bell's objection to a non-dispositive Order of the Magistrate Judge (docket # 108) denying his motion to hold this matter in abeyance (docket # 103) pending habeas proceedings in a different court. The Court treats the objection as an appeal under Rule 72(a). The Court is satisfied that the Magistrate Judge's Order was neither clearly erroneous nor contrary to law. To the contrary, it was an entirely sensible case management decision.